
The Parliament of the Commonwealth of Australia

From conflict to cooperation

Inquiry into the Child Support Program

House of Representatives
Standing Committee on Social Policy and Legal Affairs

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Canberra

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Foreword

I am pleased to present the report of the House of Representatives Standing Committee on Social Policy and Legal Affairs on the Inquiry into the Child Support Program.

From the outset, a relationship breakdown can be an extremely difficult time for all family members with different points of stress evident between separating parents and children. With a change in family dynamic comes the need to redefine relationships and ensure that decisions taken reflect the needs of all family members, but with a particular focus on the welfare of children involved. In many cases, separating parents are able to come to amicable resolutions in developing new family arrangements, however in some instances a high degree of conflict may be present.

The Child Support Program (CSP) aims to provide administrative support, advice and financial adjudication for separating parents. The CSP is one of the Australian Government's more significant social services programs interacting with the family assistance system, family law and taxation streams, and affecting some 1.1 million children.

The report of the Committee presents a detailed analysis of the issues raised in the context of the inquiry's terms of reference. The Committee received a significant response to its call for evidence, with many written submissions and oral testimonials presented along with some 11 300 responses to a questionnaire developed to gauge the experiences of those who have interacted with the CSP.


The Committee's report addresses a number of themes that emerged as areas of concern in the course of the inquiry - mediation, ensuring that the child support formula reflects contemporary Australia, improving communication between the program and its clients, special support services for where there is family violence and the merits of guaranteed child support payments.

The Committee's findings have resulted in a total of 25 recommendations. In making these recommendations, the Committee notes that the CSP has evolved so that it is able to fit the needs of a vast and varied clientele, some with complex requirements. The system is not designed as a 'one size fits all' mechanism and all decisions made in the context of the CSP must consider the effect on individuals and families as well as the 'flow-on' impacts of the wider program. Key amongst the recommendations were:

- the use of mediation at the initial stages of new child support cases,
- amending the CSP to ensure the adequacy of calculated amounts and equity for both payers and payees with respect to the self-support amount, the cost of children table and indexation mechanisms, the use of gross income levels for payment calculations, and consideration of child support income management where substantiated allegations of payments not being adequately used on the needs of the child;
- significantly improving Australian Government agency communication and explanation of decisions linked to the CSP; and
- the assessment, modelling and potential trial of a limited financial guarantee for either vulnerable families or a randomised sample of CSP clients.

In presenting the report, I would like to acknowledge the input of relevant Australian Government entities, support groups and those with an intimate knowledge of the system for providing the Committee with an in-depth understanding of a very complex scheme. I would particularly like to express my appreciation and gratitude to all of those individuals and families who took the time to provide the inquiry with, quite often, very personal accounts of their experiences with the CSP. The experiences and accounts presented by you as clients within the constraints of a difficult system have provided the Committee with invaluable insight in framing the recommendations presented in this report. The Committee hopes that all of the recommendations presented will be adopted and implemented in a timely and collaborative manner.

Mr George Christensen MP
Chair



Membership of the Committee

Chair Mr George Christensen MP

Deputy Chair Ms Sharon Claydon MP

Members Ms Terri Butler MP

Hon Mark Dreyfus QC MP

Mrs Louise Markus MP

Mr Tony Pasin MP

Mr Graham Perrett MP

Hon Christian Porter MP (until 25/9/2014)

Ms Melissa Price MP (from 25/9/2014)

Hon Dr Sharman Stone MP

Mr Michael Sukkar MP

Mr Clive Palmer MP (supplementary)



Terms of reference

The Committee will inquire and report on the following:

- methods used by Child Support to collect payments in arrears and manage overpayments;
- whether the child support system is flexible enough to accommodate the changing circumstances of families;
- the alignment of the child support and family assistance frameworks;
- linkages between Family Court decisions and Child Support's policies and processes; and
- how the scheme could provide better outcomes for high conflict families.

As part of this inquiry, the Committee has a particular interest in:

- assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments;
- the effectiveness of mediation and counselling arrangements as part of family assistance frameworks; and
- ensuring that children in high conflict families are best provided for under the child support scheme.

In carrying out this review, the Committee should assess whether any problems experienced by payers or payees of child support impact on the majority of parents and other carers involved in the system, or a minority, and make recommendations accordingly (e.g. there may be a case for specialised processes and supports for some parents meeting certain criteria).



List of abbreviations

Assessment Act	<i>Child Support (Assessment) Act 1989</i>
AGD	Attorney-General's Department
AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
ATI	Adjusted Taxable Income
ATO	Australian Tax Office
CALD	Culturally and linguistically diverse
COA	Change of Assessment
CS	Child support
CSP	Child Support Program [formerly known as the Child Support Agency, or CSA]
DHS	Department of Human Services
DPO	Departure Prohibition Order
DSS	Department of Social Services
EOI	Expression of Interest

<i>Every picture tells a story</i>	Report of the House of Representatives Family and Community Affairs Committee, <i>Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation</i> , 2003.
FaCS	Department of Family and Community Services (predecessor to DSS)
FDR	Family Dispute Resolution
FRC	Family Relationship Centre
FRSA	Family and Relationship Services Australia
FTB-A & FTB-B	Family Tax Benefit Part A and Family Tax Benefit Part B
ICS	Intensive Collection Services
LFAA	Lone Fathers Association (Australia)
Tax Act	<i>Income Tax Assessment Act 1936</i> or the <i>Income Tax Assessment Act 1997</i>
MIT	Maintenance Income Test
MAT	Maintenance Action Test
MTAWE	Male Total Average Weekly Earnings
NAP	Non-Agency Payment
NCSMC	National Council of Single Mothers and their Children
Parent	A child's parent, biological or adopted, or a non-parent carer (such as a grandparent)
The Parkinson report	Department of Social Services, <i>In the Best Interests of Children: Report of the Ministerial Taskforce on Child Support</i> , 2005.
The Price report	Report of the Joint Select Committee on Certain Family Law Issues, <i>The Operation and Effectiveness of the Child Support Scheme</i> , 1994
Registrar	The Child Support Registrar, appointed under the <i>Child</i>

Support (Registration and Collection) Act 1988

Registration and
Collection Act

Child Support (Registration and Collection) Act 1988

RA

Relationships Australia

SSAT

Social Security Appeals Tribunal

VLA

Victoria Legal Aid

WLSA

Women's Legal Services Australia



List of recommendations

2 Child support in context

Recommendation 1

The Committee recommends the Australian Government take steps to collect comprehensive demographic information on all clients of the Child Support Program, and use that information to ensure that child support tools, practices and procedures are culturally and linguistically tailored for the range of Child Support Program clients.

Recommendation 2

The Committee recommends that the Australian Government make anonymised statistical information on the Child Support Program and its clients available so that the effects of the scheme may be better researched, evaluated and understood.

Recommendation 3

The Committee recommends that the Australian Government provide additional funding and training to Family Relationship Centres to assist separating or separated parents to negotiate child support arrangements, including:

- the use of mediation at the initial stages of new child support cases,
- the provision of financial counselling and training in the mediation process to assist people to understand and plan for their likely child support liability, especially those on variable incomes, and
- the strengthening of mediation agreements to include appropriate enforcement and review provisions.

The Committee notes that mediation is not considered appropriate for families where domestic violence is present.

Recommendation 4

The Committee recommends that the Australian Government provide additional funding and training to Family Relationship Centres to trial the provision of mediation services in cases involving child support objections or change of assessment processes, where these are in dispute. The Committee notes that mediation is not considered appropriate for families where domestic violence is present.

3 The program

Recommendation 5

In conducting a review of the child support formula, the Committee believes that the Australian Government should have regard to a range of guiding principles including the best interests of the child/ren involved, whether fair and amenable private shared parenting arrangements have been successfully entered into, and whether any family violence is present in the family dynamic.

Taking into account the framing principles of the Child Support Program which aim to ensure that the system operates in the best interests of the child, the Committee recommends that the Australian Government review the Child Support Program to ensure the adequacy of calculated amounts and equity of the program for both payers and payees with respect to:

- the current self-support amount and indexation mechanisms;
- the cost of children table and indexation mechanisms;
- the use of gross income levels for child support payment calculations; and
- consideration of child support income management where there are substantiated allegations of child support payments not being adequately spent on the needs of the child.

Recommendation 6

The Committee recommends the Australian National Audit Office conduct a performance audit of the cooperation between the Australian Taxation Office and the Department of Human Services to address the non-lodgement of tax returns by clients of the Child Support Program. The recommendations of the audit should be incorporated into the next memorandum of understanding between the Australian Taxation Office and the Department of Human Services relating to this area of cooperation, negotiations of which should not commence until the audit has been presented in Parliament.

Recommendation 7

The Committee recommends the Australian Government amend current policy to ensure that the penalties applicable to the non-lodgement or late-lodgement of tax returns are enforced for all clients of the Child Support Program. The penalty should allow for defences where the individual has a reasonable excuse for non-lodgement, such as circumstances outside their control. Consideration should also be given to the annual indexation of the penalty. A working group comprising representatives of the Australian Taxation Office, the Department of Social Services and Department of Human Services should be established to recommend the size of the penalty.

Recommendation 8

The Committee recommends that the Australian Government amend legislation to enable a greater period of time before determining when to adjust the amount of child support payable in interim care determinations. The Committee considers that the current fourteen week period, after which Department of Human Services changes the child support payable to reflect the care taking place at that time, does not provide sufficient time for relevant legal proceedings to be completed or for prior agreed arrangements to be enforced by a court or for revised arrangements to be agreed upon. The best interests of the child must be paramount in any amendment made.

Recommendation 9

The Committee recommends that the Australian Government consider international models for enforcing contact/parenting orders through the child support program and how these models may be applied to the Australian context. The Committee notes that where family violence is present, these models may not be appropriate.

Recommendation 10

The Committee notes that the intent of the “capacity to earn” criteria is to prevent payers deliberately avoiding their financial responsibilities in respect to shared parenting. However there are also genuine instances where a person’s earning capacity may decrease due to decreased market demand for certain skills, the need to retrain, health issues or other life changes. A greater degree of flexibility is required. The Committee therefore recommends the Australian Government review “capacity to earn” as a rationale for initiating Changes of Assessment under Reason 8.

Recommendation 11

The Committee recommends that the Australian Government seek to develop a clearer system for resolving disputes about the payment of school fees as Non-Agency Payments.

Recommendation 12

The Committee recommends that the Australian Government consider matters pertaining to:

- the hurdle for courts to set aside Child Support Agreements made before 1 July 2008, and to set aside all Binding Child Support Agreements, and
- the amendment of section 56(2) of the *Child Support (Assessment) Act 1989* to allow the Registrar to take into account amended tax assessments.

4 The agency

Recommendation 13

The Committee recommends that the Australian Government institute an ongoing internal audit of the consistency of advice and decision-making by Child Support Program staff, with results published regularly and summaries provided in the Department of Human Services Annual Report.

Recommendation 14

The Committee recommends that the Australian Government introduce a Centrelink policy to actively ask all CSP clients with an FTB entitlement which FTB calculation method they wish to use, at least every six months, thereby reducing unintentional financial hardship.

Recommendation 15

The Committee recommends the Australian Government expedite the conclusion of the Department of Human Services videoconferencing trial, and prioritise the provision of videoconferencing services to all Child Support Program clients, for non-routine or significant Child Support Program processes.

Recommendation 16

The Committee recommends the Australian Government address the Child Support Program's issues of complexity and proliferation in communications by seeking advice on how to incorporate insights from behavioural economics and best-practice in the communication of financial information.

Recommendation 17

The Committee recommends the Department of Human Services appoint dedicated and suitably trained ‘information officers’ in the Child Support Program to clearly explain how advice or a decision was arrived at in a particular case. Such officers:

- should be senior APS-level officers (APS 5-6),
- should be experts in child support legislation, policy and procedures,
- should proactively contact clients with a history of disputed decision making when any decision is made,
- should consult with individual decision makers as necessary to fully comprehend a case before contacting a client,
- should be able to explain any documentation created by the Child Support Program,
- should be provided with comprehensive interpreting facilities for culturally and linguistically diverse clients, and
- should not be tasked with collecting any information from clients.

Recommendation 18

The Committee recommends the Australian Government create a mechanism for Child Support Program clients to nominate preferred communication methods, including restriction to phone calls or letters, to ensure that communication by the Child Support Program does not cause harm.

Recommendation 19

The Committee recommends the Australian Government conduct ongoing statistical surveys of the rate of actual payment for Child Support Program clients using Private Collect, with results published regularly and summaries provided in the Department of Human Services annual report.

Recommendation 20

The Committee recommends the Australian National Audit Office conduct a performance audit of the Child Support Program’s Legal Enforcement service, including the extent of the Child Support Program’s public criteria for pursuing litigation.

Recommendation 21

The Committee recommends the Australian Government seek to amend the legislation governing Departure Prohibition Orders (DPOs) such that DPOs are only issued by a tribunal or court on the application of the Registrar and after providing an opportunity for the subject of the DPO

to be heard. In cases of urgency, the Registrar should have a limited power to issue an interim DPO, for a non-renewable period of no more than 30 days. Whenever a DPO or interim DPO is considered in relation to a person who resides outside of Australia, the tribunal, court or Registrar must give special consideration to those circumstances

Recommendation 22

The Committee recommends that the Australian Government ensure equity in the collection of child support debts and of overpayments, in particular that the same flexibility that applies to the collection of overpayments is applied to the collection of debts, especially where the debts were unintended. In implementing this recommendation the Government should at all times take into account the best interests of the child.

Recommendation 23

The Committee recommends that the Australian Government respond to Australian Law Reform Commission *Report 117 Family Violence and Commonwealth Laws – Improving Legal Frameworks* as a priority.

Recommendation 24

The Committee recommends that the Australian Government recognise the importance of specialist response and support to separated families where family violence has been present. Accordingly, the Committee recommends the establishment of a dedicated family violence response unit within the Department of Human Services. This response unit should be responsible for ensuring that the safety and wellbeing of the child are paramount and should be tasked with:

- providing a one-stop point of contact for all enquiries and support services
- providing a means of intermediary communication between parties
- coordinating access to services across Australian Government Departments

Recommendation 25

The Committee recommends that the Australian Government:

- examine the social and economic impacts in other jurisdictions of a limited child support guarantee system,
- conduct modelling to assess if there is capacity to apply such a limited guarantee to the Australian context, and then

- consider the feasibility of conducting a trial of a limited guarantee for either vulnerable families or for a random sample of Child Support Program clients.

